

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

STEVEN D. MAHONEY,

Petitioner,

V.

PAT GLEBE,

## Respondent.

Case No. C09-5251 FDB/KLS

REPORT AND  
RECOMMENDATION TO  
DENY APPLICATION TO  
PROCEED *IN FORMA  
PAUPERIS*

**Noted for: June 12, 2009**

This case has been referred to Magistrate Judge Karen L. Strombom pursuant to 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Petitioner is a Washington state inmate at the Stafford Creek Corrections Center in Aberdeen, Washington. He has filed a petition for writ of *habeas corpus* pursuant to 28 U.S.C. § 2254 and an application to proceed *in forma pauperis*. Dkt. 1. Because Petitioner appears to have sufficient funds with which to pay the \$5.00 court filing fee, the undersigned recommends the Court deny the application.

## I. DISCUSSION

The district court may permit indigent litigants to proceed *in forma pauperis* upon completion of a proper affidavit of indigency. *See* 28 U.S.C. § 1915(a). However, the Court has broad discretion in denying an application to proceed *in forma pauperis*. *Weller v. Dickson*, 314 F.2d 598 (9th Cir. 1963), *cert. denied*, 375 U.S. 845 (1963).

Several district courts have ruled that denial of *in forma pauperis* status is not unreasonable when a prisoner is able to pay the initial expenses required to commence a lawsuit. *See Temple v. Ellerthorpe*,

1 586 F.Supp. 848 (D.R.I. 1984); *Braden v. Estelle*, 428 F.Supp. 595 (S.D.Tex. 1977); *U.S. ex rel. Irons v.*

2 *Com. of Pa.*, 407 F.Supp. 746 (M.D.Pa. 1976); *Shimabuku v. Britton*, 357 F.Supp. 825 (D.Kan. 1973),

3 *aff'd*, 503 F.2d 38 (10<sup>th</sup> Cir. 1974); *Ward v. Werner*, 61 F.R.D. 639 (M.D.Pa. 1974).

4 By requesting the Court to proceed *in forma pauperis*, Petitioner is asking the government to incur  
5 the filing fee because he allegedly is unable to afford the costs necessary to proceed with his petition for  
6 *habeas corpus*. Petitioner's application reflects that he earns \$55.00 per month. Dkt. 1, p. 1. Petitioner  
7 states that he earns \$41.00 net, taking into account 20% of his wages that he pays for child support and  
8 5% of his wages that he pays for the cost of his incarceration. *Id.* Even considering these costs and  
9 recognizing that the funds to which Petitioner has access may not be great, given the fact that a prisoner's  
10 basic needs are provided for while incarcerated and the minimal filing fee required to proceed with this  
11 action (\$5.00), it is not unreasonable to expect Petitioner to pay that fee from those funds.

## 12 II. CONCLUSION

13 Because it is reasonable to expect Petitioner to incur the costs to proceed with his petition, the  
14 undersigned recommends that the Court deny his application to proceed *in forma pauperis*. Accordingly,  
15 the undersigned also recommends that the Court order Petitioner to pay the required filing fee **within**  
16 **thirty (30) days** of the Court's order and to amend his petition to properly name the person having  
17 custody over him.

18 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the  
19 parties shall have ten (10) days from service of this Report and Recommendation to file written objections  
20 thereto. *See also* Fed.R.Civ.P. 6. Failure to file objections will result in a waiver of those objections for  
21 purposes of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985). Accommodating the time limit imposed by Fed.  
22 R. Civ. P. 72(b), the clerk is directed set this matter for consideration on **June 12, 2009**, as noted in the  
23 caption.

24 Dated this 19th day of May, 2009.

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Karen L. Strombom  
United States Magistrate Judge